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Caroline Thomas Jacobs, Director
Wildfire Safety Division
California Public Utilities Commission
505 Van Ness Avenue
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SUBJECT: Southern California Edison Company's Comments on Wildfire Safety Division's Proposed Changes to the 2021 Safety Certification Guidance Pursuant to Public Utilities Code §8389(f)(2)

Director Thomas Jacobs,

In response to Wildfire Safety Division's (WSD) proposed changes to the 2021 Safety Certification guidance served on May 11, 2021 (WSD Proposal), Southern California Edison (SCE) respectfully submits these comments.

INTRODUCTION

SCE appreciates the timely issuance of WSD's guidance regarding the Safety Certification process. However, in two critical respects, the WSD Proposal contradicts the plain language of California Public Utilities Code (PUC) Section 8389(e), which governs the requirements for issuance of a Safety Certification.

First, the WSD Proposal incorrectly states that to satisfy Section 8389(e)(7)'s¹ requirement to provide documentation that an electrical corporation "is implementing its approved wildfire mitigation plan," the WSD will look beyond the *implementation* advice letter required under the statute and will also rely on *compliance* documentation.

Second, the express language of Section 8389(e)(2) provides that an electrical corporation's showing of "good standing" "can be satisfied by the electrical corporation having agreed to implement the findings of its most recent safety culture assessment, if applicable." In direct contravention of the statute, however, the WSD Proposal says that "even if" that statutory condition is met, the WSD can deny good standing based on "other criteria." One such "other criteria" is that the WSD would take into account if the electrical corporation caused a catastrophic wildfire while not in compliance "with all

¹ Where unspecified herein, "Section" or "§" refers to a section of the California Public Utilities Code.

relevant WMP initiatives” as determined by WSD.² This new requirement is not lawful. Wildfire Mitigation Plan (WMP) compliance is separately addressed in an annual compliance review (among other compliance responsibilities in AB 1054, which are shared between WSD and the Commission), not as a precondition to receiving a Safety Certification. Moreover, while compliance-related issues may appropriately be considered, among many other factors, in a later cost recovery reasonableness review, the WSD Proposal attempts inappropriately to accelerate a quasi-prudence review as a condition of obtaining the Safety Certification.

As explained in the background section below, WSD’s proposed sequencing and new preconditions are inconsistent with the framework adopted in Assembly Bill (AB) 1054. That landmark legislation was designed by the Governor’s Office and the California State Legislature, incorporating findings of the Commission on Catastrophic Wildfire Cost and Recovery, as a comprehensive plan to balance the interests of all stakeholders—utility customers and shareholders and the public—in the wake of catastrophic wildfires in 2017-2018 that threatened the financial viability of California’s investor-owned electric utilities. The Safety Certification process is just one component of the legislation’s intricate balancing of interests. Another important component is the creation of a Wildfire Fund, to which SCE’s customers and shareholders have contributed substantial sums of money. SCE respectfully requests that the WSD Proposal be modified so that it is consistent with the statute, which provides clear, objective, forward-looking criteria for the determination of whether a utility can obtain a Safety Certification. Holding a valid certification is important because it unlocks the full benefits of the Wildfire Fund, and enables a fair cost recovery standard to be applied at the Commission. Changing the terms of the deal midstream will cause confusion and uncertainty and will undermine a principal objective of AB 1054 to promote electric corporations’ financial stability in light of California’s strict liability regime and the increasing threat of catastrophic wildfires to communities.

COMMENTS ON WSD PROPOSAL

1. Background and Purpose of AB 1054 and the Wildfire Fund

To understand why the WSD proposed Safety Certification requirements are unreasonable and unlawful, a more detailed overview of the background and purpose of AB 1054 (and the Wildfire Fund in particular) is instructive.

The devastating wildfires of 2017 and 2018 were bigger and more damaging than ever experienced in California or any other region of the country in large part because of climate change. California’s electric utilities were in a precarious position owing to a combination of increasing catastrophic wildfires, the application of inverse condemnation with a strict liability standard, and the Commission’s unclear and prolonged cost recovery process for recovering IOU claims payouts. The Governor’s

² WSD Proposal, p. 5.

Strike Force had acknowledged that the prior “system for allocating costs associated with catastrophic wildfires” was “untenable” given the wildfire liabilities that “have crippled the financial health” of the electric utilities.³ Each of the utilities’ credit ratings were downgraded, SCE hovered just above investment grade, and rating agencies were threatening imminent additional downgrades below investment grade if the Legislature did not fix the wildfire cost recovery framework. Pacific Gas and Electric Company (PG&E) filed for bankruptcy as a result of the wildfire liabilities it was facing. The Strike Force also expressed concerns about the level of utility credit rating deterioration, the increasing costs of borrowing to fund “essential safety improvements” and the direct impacts of these costs on “Californians’ access to safe, reliable and affordable electricity.”⁴ Having uncapped liabilities, in a regulatory structure where cost recovery from customers was uncertain even though state courts imposed strict liability for damage caused by utility infrastructure (regardless of fault), called urgently for a more sensible solution.

With this backdrop, AB 1054 was created as an urgency bill and signed into law by Governor Newsom on July 12, 2019 (effective immediately). AB 1054 was designed by the California State Legislature as “a new framework for allocating costs of utility-caused wildfires,” a comprehensive plan to balance the interests of all stakeholders—utility customers and shareholders and the public.

A central part of the statutory framework was the creation of a Wildfire Fund, capitalized by \$21 billion, contributed equally by utility customers and shareholders, which could be accessed in the event of a covered wildfire where payments for damages and claims exceeded specified thresholds.⁵ AB 1054 also provided that \$5 billion in wildfire-mitigation costs incurred by the investor-owned utilities cannot earn an equity return.⁶ In exchange, a participating utility may seek payments from the Wildfire Fund for settlements and court judgments resulting from a covered wildfire above one billion dollars or the amount of insurance coverage required by the fund administrator.⁷ Thereafter, the Commission will review the utility’s conduct that led to the wildfire⁸ and,

³ “Wildfires and Climate Change: California’s Energy Future”, Governor Newsom’s Strike Force, pp. 2-3; available at: <https://www.gov.ca.gov/wp-content/uploads/2019/04/Wildfires-and-Climate-Change-California%E2%80%99s-Energy-Future.pdf>.

⁴ Id.

⁵ PUC § 3288(b); 3292(b).

⁶ PUC § 8386.3(e).

⁷ PUC § 3280(f).

⁸ PUC § 451.1

to the extent it finds that the utility acted unreasonably, may require the utility to reimburse the Wildfire Fund.⁹

AB 1054 established two critical changes to the Commission's cost recovery process to the extent the utility held a valid Safety Certification at the time the fire was ignited. First, the utility's conduct is deemed reasonable unless an opposing party creates a serious doubt as to the reasonableness of the utility's conduct, at which time, the burden shifts back to the utility to dispel the doubt.¹⁰ The revised reasonableness standard with a shifting burden of proof was viewed by SCE and investors as important in increasing the likelihood of cost recovery.

Second, the amount of potential reimbursement to the Wildfire Fund is capped based on a formula that is tied to the utility's transmission and distribution rate base. The cap is lifted only in the extreme circumstance in which the Fund Administrator finds that the utility acted with conscious or willful disregard for the rights and safety of others.¹¹ The liability cap is a crucial feature in moderating the most extreme downside risks and creating certainty around a maximum exposure to a catastrophic wildfire event.

To reiterate, the Safety Certification plays a key role in limiting the utilities' exposure to liability from wildfires and was a critical part of the package that includes substantial initial and annual shareholder and customer contributions to the Fund, and restrictions on IOU rate base earnings. SCE has relied on the fundamental rules laid out in AB 1054 regarding the Safety Certification process and the key benefits of the Wildfire Fund that flow from it.

According to Governor Newsom's Strike Force, the intent was that the Legislation "[e]stablish[] an enforceable Safety Certification that utilities are required to obtain annually."¹² PUC Section 8389(e) codifies the requirements for a utility to obtain Safety Certification. These requirements are precise and do not involve discretionary judgments: the statute provides that after the initial certification is issued, the WSD or its successor "shall issue a Safety Certification," if the utility "provides documentation" of seven specified criteria:

- having an approved WMP (which approval is governed by a different statute);
- implementing the approved WMP;
- being in good standing, which may be satisfied by a utility agreeing to implement safety culture assessment findings;

⁹ PUC § 3292(h)(1).

¹⁰ PUC § 451.1(c).

¹¹ PUC § 3292(h)(3)(A).

¹² June 21, 2019, Governor Newsom's Strike Force Progress Report, p. 7. <https://www.gov.ca.gov/wp-content/uploads/2019/06/Strike-Force-Progress-Report-6-21-19.pdf>.

- having a safety committee of its board of directors composed of members with relevant safety experience;
- establishing board-of-director-level reporting to the Commission on safety issues; and
- establishing certain executive incentive compensation-related structures.¹³

Once the above requirements are met, the WSD “shall issue” the Safety Certification, which remains valid for 12 months. There is no revocation mechanism after issuance, and WSD has no discretion to withhold this Safety Certification if, during the annual re-certification process, the statutory criteria are met. Moreover, the statutory requirements for obtaining a Safety Certification do not give WSD discretion to require a finding of compliance with the WMP, whether before or after a catastrophic wildfire has occurred.¹⁴ AB 1054 has separate provisions for WSD to oversee compliance and to issue a compliance report;¹⁵ for the Wildfire Safety Advisory Board to recommend to WSD performance metrics and processes for determining a utility’s compliance with the WMP;¹⁶ for the Commission to establish a wildfire mitigation plan compliance process;¹⁷ for WSD to recommend to the Commission that it pursue enforcement action if WSD determines that a utility is not in compliance with its WMP;¹⁸ and for the Commission’s cost recovery reasonableness review.¹⁹ These oversight, enforcement and reasonableness review processes stand outside of the Safety Certification eligibility criteria.

Although credit rating agencies viewed the passage of AB 1054 as positive, they noted—and have continued to note—that much depends on how the details of this important legislative framework are implemented. In the sections below, two important implementation details should be resolved quickly in light of errors made in the WSD Proposal.

2. The WSD Proposal Contradicts Section 8389(e)(7) by Adding a *Compliance Requirement Where Documentation of Implementation Is Sufficient*

¹³ This last item, regarding executive incentive compensation, has two different requirements for a total of seven under Section 8389(e).

¹⁴ PUC §8389(e) does not include the term “compliance.”

¹⁵ PUC § 8386.3(c).

¹⁶ PUC § 8389(b).

¹⁷ PUC § 8389(d)(3).

¹⁸ PUC § 8389(g).

¹⁹ PUC § 451.1.

Section 8389(e)(7) simply requires that the utility “provide documentation” that it “is implementing its approved wildfire mitigation plan.”²⁰ To meet this requirement for Safety Certification, a utility needs only to show that it has previously submitted quarterly tier 1 advice letters (AL) with specified information: the ALs are required to “detail[] the implementation of both the utility’s approved wildfire mitigation plan and recommendations of the most recent safety culture assessment, and a statement of the recommendations of the board of directors safety committee meetings that occurred during the quarter. The advice letter shall also summarize the implementation of the safety committee recommendations from the electrical corporation’s previous advice letter filing.”²¹ Per the statute, these implementation advice letters are subject to Tier 1 review,²² which requires the lowest level of scrutiny by the Energy Division.²³ The WSD does not provide disposition of the advice letters under the statute, but prior to Safety Certification the WSD has an opportunity to audit them “[i]f the division has reason to doubt the veracity of the statements contained in the advice letter filing.”²⁴

Contrary to the statute, the WSD Proposal would add a requirement for *compliance* with the WMP rather than *documentation of implementation* of the WMP:

The electrical corporation is *satisfactorily executing and in compliance* with its approved WMP, including the quarterly submission of Tier 1 advice letters containing information as required by §8389(e)(7)²⁵...The WSD is currently evaluating available documentation and will be evaluating the IE ARCs [the independent evaluator’s annual reports on compliance]

²⁰ “The executive director of the commission shall issue a safety certification to an electrical corporation if the electrical corporation provides documentation of the following... (7) The electrical corporation is implementing its approved wildfire mitigation plan. The electrical corporation shall file a tier 1 advice letter on a quarterly basis that details the implementation of both its approved wildfire mitigation plan and recommendations of the most recent safety culture assessment, and a statement of the recommendations of the board of directors safety committee meetings that occurred during the quarter. The advice letter shall also summarize the implementation of the safety committee recommendations from the electrical corporation’s previous advice letter filing. If the division has reason to doubt the veracity of the statements contained in the advice letter filing, it shall perform an audit of the issue of concern.” PUC § 8389 (e)(7).

²¹ PUC § 8389 (e)(7). SCE notes that several of the requirements included in 2.2.4 (bullets 3 and 4) are duplicative of what SCE is already required to include in its quarterly advice letter.

²² General Rule 7.6.1, Energy Industry Rule 5.1.

²³ Similarly, the requirement for Safety Certification under Section 8389(e)(1) requires that the utility provide documentation that it “has an approved wildfire mitigation plan”; approval of the plan would have already been accomplished via the WSD approval and CPUC ratification pursuant to Section 8386.3(a).

²⁴ PUC § 8389 (e)(7).

²⁵ WSD Proposal, p. 1 (emphasis added).

to aid in determining *compliance and effective implementation* of WMPs. The WSD proposes using these documents, assessments, and associated findings to assess whether an electrical corporation has satisfied the requirements of Pub. Util. Code §8389(e)(7) when evaluating electrical corporation Safety Certification requests.²⁶

Despite the unquestionable importance of satisfactory and substantial compliance with an approved WMP, Safety Certification eligibility is not predicated on a compliance determination. As explained in Part 3.d, compliance is handled elsewhere in the statute, such as in Section 8386.3, which includes extensive provisions regarding assessment of utility compliance with a previously approved WMP, including compliance reporting and independent compliance evaluation, among other provisions.²⁷ The quote from the WSD Proposal grafts those other sections of the statute onto the Section 8389(e)(7) advice letter requirement, which is inappropriate.

Conditioning the issuance of a Safety Certification on a demonstration that the utility has complied with its WMP, and has done so to the satisfaction of WSD, would transform a straightforward and clear process contemplated by AB 1054 into a lengthy and discretionary review into the utility's conduct under its WMP. This would introduce substantial uncertainty into the utilities' ability to obtain Safety Certification, undermining the purpose of AB 1054, and jeopardizing the financial health and stability of electric corporations in California.

3. The WSD Contradicts Section 8389(e)(2) by Proposing Additional “Good Standing Requirements” for Safety Certification

a. Good Standing Can Be Demonstrated by Agreeing to Implement Safety Culture Assessment Findings

Under the express provisions of Section 8389(e)(2), if an electrical corporation has “agreed to implement the findings of its most recent safety culture assessment, if applicable,”²⁸ then it “can...satisf[y]” the good standing requirement. Stated differently, agreeing to implement the most recent safety culture assessment findings is a condition sufficient to confer good standing, without more. For that reason, the WSD Proposal contravenes the law when it states that “even if [the utility] has agreed to implement the

²⁶ WSD Proposal, p. 4 (emphasis added).

²⁷ PUC § 8386.3.

²⁸ “The executive director of the commission shall issue a safety certification to an electrical corporation if the electrical corporation provides documentation of the following :...The electrical corporation is in good standing, which can be satisfied by the electrical corporation having agreed to implement the findings of its most recent safety culture assessment, if applicable.” PUC § 8389 (e)(2).

WSD's recommendations associated with its most recent SCA," it can determine that the utility is *not* in good standing.²⁹

CPUC Resolution WSD-011, voted out by the Commission on November 19, 2020, reinforces the statutory requirement for being found in good standing, including with respect to the 2021 Safety Certification process:

[T]he WSD may require those electrical corporations seeking a Safety Certification to agree to implement findings of the WSD's safety culture assessment in order to be considered in good standing for the purposes of a Safety Certification. In 2021, the WSD plans to focus on ensuring that each electrical corporation has provided all the information required for the WSD to assess a baseline for safety culture and, if applicable, has presented how they plan to drive improvements to its safety culture. The WSD may require those electrical corporations seeking a Safety Certification to make changes or updates to that plan as one requirement for electrical corporations to be considered in good standing. The WSD will communicate the process by which each electrical corporation must do this together with the results of its first safety culture assessment in 2021. In future years, the WSD intends to assess improvement over the baseline for safety culture set [sic] in 2021 and may evaluate the adequacy of each electrical corporation's plan to improve safety culture in more detail.³⁰

Resolution WSD-011 focused on the utility's agreement to implement findings of the WSD's safety culture assessment and outlines this process.

Yet now, contrary to the statute, and contrary to a prior resolution describing how the statute should be implemented, WSD suggests "other criteria" and "additional criteria" for determining good standing under Part 2.2.3.2 of the WSD Proposal, suggesting that a good standing determination can be denied if the WSD finds that the electrical corporation caused a catastrophic wildfire while not in compliance with relevant WMP initiatives. This may result in the WSD finding that the electrical corporation is not in good standing even if it has agreed to implement the WSD's recommendations associated with its most recent SCA.³¹

The WSD cannot modify the statutory requirements for Safety Certification by directly contradicting the statute, which explicitly states that good standing "*can be satisfied*" by the electrical corporation having agreed to implement the findings of its most recent

²⁹ WSD Proposal, p. 5.

³⁰ Resolution WSD-011, Attachment 4: Annual Safety Culture Assessment Process Proposal (November 2020).

³¹ WSD Proposal, p. 5.

safety culture assessment, if applicable.”³² It would be unlawful for the WSD to deny good standing if the electrical corporation agrees to implement the findings of the most recent safety culture assessment. The review should stop there.³³

b. WSD’s Additional Criteria Lack Basis in Law or Policy

The WSD Proposal errs by introducing additional criteria that are directly contrary not just to the statutory language but to the AB 1054 policy framework. Without disclosing the full spectrum of what it could potentially require for a demonstration of good standing, the WSD Proposal includes an “example” of additional criteria for determining good standing, which has two parts: (1) “if an electrical corporation is found by CAL FIRE to have caused a catastrophic wildfire” and (2) “the WSD finds that the electrical corporation was not in compliance with all relevant WMP initiatives at the time.”

With respect to the first part, it is peculiar to tie good standing to a determination relating to an undated “catastrophic wildfire,” a term not even defined in AB 1054. To the extent the WSD Proposal aimed to refer to covered wildfires, that is even more peculiar because before an electrical corporation is able to avail itself of the Wildfire Fund to pay eligible claims, there must be a causation determination for covered wildfires. Section 1701.8 defines “covered wildfire” as “any wildfire ignited on or after the effective date of this section, caused by an electrical corporation . . .” Section 3280(f) defines “eligible claims” as claims for third-party damages against an electrical corporation resulting from *covered wildfires* exceeding certain thresholds. Having a valid Safety Certification confers benefits on electrical corporations who have been determined to have caused a catastrophic wildfire. Thus, it is circular for the WSD Proposal to imply that WSD has authority to block the certification based, in part, on the utility having caused a covered wildfire. Under this logic, no utility would have been or will be incentivized to contribute to the Wildfire Fund.

With respect to the second part, the WSD Proposal states that if the wildfire causation determination has been made *and* the WSD “finds that the electrical corporation was not in compliance with all relevant WMP initiatives at the time,” then that may result in a denial of good standing which, in turn, would block the utility from receiving a Safety Certification. Again, the additional criteria flies in the face of the statute. Nowhere in Section 8389(e) does the Legislature specify that compliance with the WMP is a pre-condition to achieving Safety Certification. That would impermissibly accelerate a

³² Section 8389(e)(2) (emphasis added).

³³ The draft guidance is also incorrect that the WSD may “take into consideration the findings of any other SCAs [safety culture assessments] and the extent to which an electrical corporation is implementing the associated recommendations” when making a good standing determination. WSD Proposal, p. 5. Provided that the utility has “agreed to implement the findings of its most recent safety culture assessment, if applicable” (Section 8389(e)(2)), the extent to which it is effectively implementing those findings is not relevant, nor is any agreement to implement additional safety culture assessment findings apart from the most recent findings.

reasonableness review that, under the AB 1054 framework, occurs *after* the Wildfire Fund is accessed, regardless of whether the entity drawing from the fund has a Safety Certification.

Moreover, whatever reasonableness review WSD would employ for determining compliance with the WMP for purposes of a Safety Certification determination would be inadequate. Section 451.1(b) sets forth the standard the Commission uses to assess the reasonableness of costs and expenses arising from a covered wildfire.³⁴ Although 451.1(b) does not provide the presumption of reasonableness of 451.1(c), it is still far more nuanced than WSD’s proposed process. It takes into account factors such as if the utility’s conduct was “related to the ignition,” or “was consistent with actions that a reasonable utility would have undertaken in good faith under similar circumstances, at the relevant point in time, and based on the information available to the electrical corporation at the time,” and factors beyond the utility’s control that may have exacerbated the costs, including “humidity, temperature, and winds.” WSD’s process would instead look at whether an electric utility caused a wildfire while out of compliance with relevant WMP initiatives, without attempting to determine a further causal connection or consider these other important factors. The accelerated process that WSD would undertake could strip the utility of a Safety Certification and the important benefits it affords, including the presumption of reasonableness and the liability cap, without a clear standard of review or due process.

Finally, the “other criteria” WSD proposes for determining good standing is logically defective. As noted above, even an electrical corporation that holds a valid Safety Certification can be stripped of an important benefit—the cap on liability to reimburse the Wildfire Fund—if the administrator determines that it acted with willful disregard of the rights and safety of others.³⁵ Under the WSD Proposal, this exacting standard that would justify removal of the liability cap is eviscerated; an electrical corporation can be stripped of the liability cap protection if it caused a fire while being out of compliance with its WMP. This incongruity was never intended in the AB 1054 framework.

c. Other Ways to Satisfy “Good Standing”

³⁴ Specifically, under Section 451.1(b), “[c]osts and expenses arising from a covered wildfire are just and reasonable if the conduct of the electrical corporation related to the ignition was consistent with actions that a reasonable utility would have undertaken in good faith under similar circumstances, at the relevant point in time, and based on the information available to the electrical corporation at the relevant point in time. Reasonable conduct is not limited to the optimum practice, method, or act to the exclusion of others, but rather encompasses a spectrum of possible practices, methods, or acts consistent with utility system needs, the interest of the ratepayers, and the requirements of governmental agencies of competent jurisdiction. Costs and expenses in the application may be allocated for cost recovery in full or in part taking into account factors both within and beyond the utility’s control that may have exacerbated the costs and expenses, including humidity, temperature, and winds.”

³⁵ See Section 3292(h)(3)(A).

As explained in part 3.a., above, the statute mandates that a Safety Certification “shall be issued if good standing is demonstrated by agreeing to implement the findings of the most recent safety culture assessment (and the other criteria for a Safety Certification are satisfied). Such agreement is sufficient and a safe harbor. If, however, an electrical corporation elects *not* to avail itself of the safe harbor,³⁶ then it may demonstrate good standing in other ways consistent with the statutory framework under Section 8389(e). For example, for SCE’s past two Safety Certifications, in which it was not possible to rely on WSD findings relating to a safety culture assessment that had not yet occurred, SCE furnished documentation about its safety training and other policies, and by explaining its plans for handling safety incidents in light of data on key metrics related to wildfire safety.³⁷

The WSD approved SCE’s submission furnishing the above documentation and found that SCE had satisfied § 8389(e)(2). The good standing showing should not be rooted in a compliance review, nor should a good standing determination be withheld as punishment for past conduct.

d. Evaluations of Reasonable Conduct and Compliance with the WMP Are Addressed Outside the Statutory Requirements for Issuing Safety Certifications

A utility’s conduct in causing a covered wildfire, and whether a utility has substantially complied with its WMP, are undoubtedly important. However, as discussed above, the AB 1054 framework addresses these matters in contexts outside of the Safety Certification criteria and approval process.

Regarding conduct, the AB 1054 framework takes into account the utility’s conduct relating to ignition when it determines an application for cost recovery. With a valid Safety Certification, the electrical corporation’s conduct is deemed reasonable unless a party to the proceeding raises serious doubt as to the reasonableness of the electrical corporation’s conduct, at which point the burden shifts to the electrical corporation to dispel the doubt.

Regarding compliance with the WMP, the following statutory provisions govern, and none of them is among the seven criteria for issuance of a Safety Certification in subsection (e) of Section 8389:

- **Section 8386.3(c)** – “Following approval of a wildfire mitigation plan, the Wildfire Safety Division shall oversee compliance with the plan consistent with the

³⁶ This could occur, for example, if WSD’s safety culture assessment makes recommendations that are unreasonable or unworkable.

³⁷ See Letter from WSD, certifying SCE’s compliance with §8389, Wildfire Safety Division Approval of Southern California Edison Company’s 2020 Safety Certification Request, p. 5 (September 17, 2020); available at: https://www.sce.com/sites/default/files/inline-files/Wildfire_WSDtoSCEsafetycertificate.pdf.

following...” including review of the electrical corporation’s annual compliance plan, making a list of qualified independent evaluators, considering the IE’s findings, and completing its compliance review within 18 months after submission.

- **Section 8389(b)(1):** The Wildfire Safety Advisory Board shall annually make recommendations to the division on all of the following: “(1) Appropriate performance metrics for determining an electrical corporation’s compliance with its approved wildfire mitigation plan.” Then, pursuant to 8389(c), every year the division “shall issue an analysis and recommendation to the commission on the recommendations provided by the board pursuant to subdivision (b).”
- **Section 8389(d)(3):** Annually, “the commission, after consultation with the division, shall adopt and approve all of the following . . . A wildfire mitigation plan compliance process.”

Importantly, AB 1054 did not vest authority in the WSD to use determinations of non-compliance to punish the utility. Rather, subdivision (g) of Section 8389 states that “[i]f the division determines an electrical corporation is not in compliance with its approved wildfire mitigation plan, it may recommend that the commission pursue an enforcement action against the electrical corporation for noncompliance with its approved plan.” Given the statutory framework, it is inappropriate for the WSD to predicate issuance of the Safety Certification on a finding of compliance with the WMP.

CONCLUSION

For the foregoing reasons, SCE requests that the WSD Proposal be revised as follows, consistent with the proposed redlined edits SCE is including herein as an attachment:

- Revise Sections 1.2 and 2.2.2 to clarify that 8389(e)(7) is satisfied through a showing that the required Tier 1 quarterly advice letters demonstrating plan implementation have been submitted, and to remove references to “compliance;”
- Delete Section 2.2.3.2 in its entirety; and
- Add new Section 2.2.3.2 listing ways good standing can be demonstrated to the extent findings from a recent safety culture assessment are not available, or an electrical corporation cannot otherwise agree to implement them

SCE appreciates the opportunity to submit its comments on the WSD’s proposed changes to the 2021 Safety Certification guidance.

As noted, attached is a redlined version of WSD’s proposed changes that reflects SCE’s comments.

If you have any questions, or require additional information, please contact me at michael.backstrom@sce.com.

Sincerely,

//s//

Michael A. Backstrom
Vice President, Regulatory Policy
Southern California Edison

cc: Service List for R.18-10-007
wildfiresafetydivision@cpuc.ca.gov
CALFIREUtilityFireMitigationUnit@fire.ca.gov

Attachment

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



May 11, 2021

SUBJECT: Wildfire Safety Division's Proposed Changes to the 2021 Safety Certification Guidance Pursuant to Public Utilities Code §8389(f)(2)

1. Background

This letter constitutes the Wildfire Safety Division's (WSD's) proposed changes to the 2021 Safety Certification guidance.

All electrical corporations seeking a Safety Certification must satisfy the requirements pursuant to Public Utilities Code (Pub. Util. Code) §8389(f)(1) and must submit their request for a Safety Certification to the WSD prior to the expiration of their current Safety Certification. To receive a Safety Certification, an electrical corporation must provide documentation to satisfy the requirements of Pub. Util. Code §8389(e). A summary of these requirements follows:

1. The electrical corporation has an approved Wildfire Mitigation Plan (WMP), pursuant to §8389 (e)(1).
2. The electrical corporation is ~~satisfactorily executing and in compliance with~~ implementing its approved WMP, including the quarterly submission of Tier 1 advice letters containing information as required by §8389(e)(7).
3. The electrical corporation is in good standing, which can be satisfied by the electrical corporation having agreed to implement the findings of its most recent safety culture assessment, if applicable (see § 8389[e][2]).
4. The electrical corporation has established a safety committee on its board of directors composed of members with relevant safety experience (see §8389[e][3]).
5. The electrical corporation has established board-level reporting to the California Public Utilities Commission (the Commission) on safety issues (see §8389[e][5]).
6. The electrical corporation has established an Executive Compensation structure approved by the WSD. This structure should prioritize safety and ensure both public safety and electrical corporation financial stability through the use of performance metrics for all executive officers as defined in Pub. Util. Code §451.5 (see § 8389[e][4] and [e][6]).

If these requirements are met, then the WSD shall issue a Safety Certification. Currently, there are four electrical corporations that have approved Safety Certifications.¹

¹ Safety Certifications are available at <https://www.cpuc.ca.gov/safetycertificates/>.

2. The WSD's Proposed Changes to the 2021 Safety Certification Guidance

The WSD proposes two key changes to the 2021 Safety Certification process. The first proposed change is to synchronize the timeline for electrical corporations to submit their Safety Certification requests. The second is to develop guidance, through a public process, for the WSD to use when evaluating Safety Certification requests from all electrical corporations.

2.1. Safety Certification Timeline

The WSD proposes that all electric corporations submit their Safety Certification requests on the same date so they can be evaluated and approved concurrently. This approach will allow the WSD to have a dedicated review period outside of other peak workflow periods and will allow the WSD to compare submissions across electrical corporations.

The WSD proposes that electric corporations submit their Safety Certification requests in September every year. Assuming all required documentation for a Safety Certification request has been provided and is complete, the WSD will then evaluate the Safety Certification requests and issue a decision at the end of the calendar year. Approved Safety Certifications would then be valid for the next 12 months, which should align with the upcoming calendar year, regardless of subsequent findings the WSD may make as to compliance or any other matter.

The WSD proposes that this new timeline for Safety Certification requests should commence this year (2021) for the three large electrical corporations² and any electrical corporations that are submitting a Safety Certification request for the first time. Specifically, the WSD proposes that Safety Certification requests be submitted on the second Monday in September as detailed in Table 1. The three large electrical corporations should submit their Safety Certification requests on this date regardless of their current Safety Certification's expiration date.

The WSD is currently in the process of evaluating the documents associated with the Safety Certification request from Bear Valley Electrical Corporation, Inc., (BVES) dated February 2, 2021. The WSD has recently denied BVES's Executive Compensation structure that is part of this submission and is awaiting a revised structure from BVES.³ As such, the timeline associated with BVES's Safety Certification is currently unclear and is unlikely to align with the other electrical corporations' Safety Certification processes this year. In 2022 there will be another opportunity to synchronize the timeline for all Safety Certification requests, including that of BVES.

The proposed timeline for Safety Certification requests from the electrical corporations is detailed in Table 1. It provides the date of electric corporations' most recent Safety Certification request, the date of the WSD's approval of this Safety Certification request, the proposed due date for 2021 Safety Certification requests, and the expected 2021 decision date.

² The three large electrical corporations are Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E).

³ https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/WSD/WSD%20Action%20Statement%20Denying%20BVES%20Exec%20Comp%20Structure_4-14-21.pdf.

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Table 1: Proposed timeline for Safety Certification requests and decision dates

| Electrical Corporation | Request Date of Current Safety Certification | Approval Date of Current Safety Certification | Proposed Submission Date for 2021 Safety Certification Requests | Proposed Decision Date for 2021 Safety Certification |
|-------------------------------|---|--|--|---|
| SDG&E | June 16, 2020 | September 14, 2020 | September 13, 2021 | December 13, 2021 |
| SCE | June 19, 2020 | September 17, 2020 | September 13, 2021 | December 13, 2021 |
| PG&E | July 29, 2020 | January 14, 2021 | September 13, 2021 | December 13, 2021 |
| BVES | December 18, 2019 | August 18, 2020 | February 2, 2021 ⁴ | To be determined |

2.2. Guidance for WSD Evaluation of 2021 Safety Certification Submissions

The WSD evaluates an electrical corporation's Safety Certification request based on the criteria set out in Pub. Util. Code §8389(e). The specific elements are addressed below.

2.2.1. Approval Status of Wildfire Mitigation Plan

Pub. Util. Code §8389(e)(1) includes as an element for Safety Certification approval that "the electrical corporation has an approved wildfire mitigation plan."

On November 20, 2020, the WSD introduced changes to the WMP (or WMP Update) approval process as described by Resolution WSD-011. The new approach introduces Revision Notices that are issued to electrical corporations when the WSD identifies critical issues, errors, or omissions in their WMPs. The WSD proposes the process below as a pathway to securing approval of a WMP in advance of the electrical corporation's Safety Certification requests in September.

Electrical corporations are required to submit their WMP (or WMP Update) in or around the first quarter of the calendar year. Pursuant to Pub. Util. Code §8389, the WSD is expected to evaluate a WMP within 90 days unless this period is extended with an appropriate justification. Following this timeframe, the evaluation would be complete by the second quarter of the calendar year.

⁴ Although the WSD denied BVES executive compensation structure, which is a requirement for the 2021 Safety Certification, BVES's 2020 Safety Certification remains valid until the WSD acts on BVES's 2021 Safety Certification request.

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However, if there are critical issues or missing elements in the WMP (or WMP Update), the WSD may issue a Revision Notice. The electrical corporation will be required to respond to the Revision Notice prior to the WSD continuing its evaluation of the WMP submission. A Revision Notice may delay the WSD's final decision regarding the WMP to the third quarter of the calendar year. If the WMP is approved following the submission of the electrical corporation's Revision Notice Response, then this would be in advance of September 13 (the proposed Safety Certification request date).

2.2.2. Implementation of Wildfire Mitigation Plan

Pub. Util. Code §8389(e)(7) includes the requirement for Safety Certification approval: ~~that "the electrical corporation provides documentation" that it "the electrical corporation is implementing its approved wildfire mitigation plan."~~ Additionally, the statute indicates electrical corporations must submit Pub. Util. Code §8389(e)(7) clarifies that this documentation includes quarterly Tier 1 advice letters (QALs) detailing the implementation of their WMPs, among other things. The WSD may conduct audits of the electrical corporation if it questions the veracity of statements made in the QALs.

~~On November 20, 2020, with the passage of Resolution WSD-012, the WSD adopted the WMP compliance process pursuant to Pub. Util. Code Section 8386.3 and Section 8389(d)(3). Among other things, this compliance process outlines the steps and actions that will be taken to evaluate whether an electrical corporation has been compliant with its approved WMP during the compliance period.⁵ To support this evaluation, the compliance process establishes that the WSD will conduct field inspections and audits throughout the compliance period. In addition to the WSD's efforts, the compliance process includes the submission of annual reports on compliance (ARCs), which are to be submitted by electrical corporations by March 31 and by an independent evaluator (IE) by July 1. It is expected that these ARCs, in combination with the WSD's findings from field inspections and audits, will be used in determining whether electrical corporations are effectively in compliance.~~

~~The WSD's field inspections and audits have been ongoing since May 2020, the electrical corporation most recent ARCs were received on March 31, 2021, and the IE ARCs are scheduled for publication on June 30, 2021. The WSD is currently evaluating available documentation and will be evaluating the IE ARCs to aid in determining compliance and effective implementation of WMPs. The WSD proposes using these documents, assessments, and associated findings to assess whether an electrical corporation has satisfied the requirements of Pub. Util. Code §8389(e)(7) when evaluating electrical corporation Safety Certification requests.~~

2.2.3. Safety Culture Assessment

Pub. Util. Code §8389(e)(2) includes the requirement for Safety Certification approval that "the electrical corporation is in good standing, which can be satisfied by the electrical corporation having agreed to implement the findings of its most recent safety culture assessment, if applicable."

⁵ Pursuant to Pub. Util. Code §8385(a)(1), the compliance period is approximately one year.

The WSD proposes the following criteria as a way to determine whether an electrical corporation is in “good standing”:

2.2.3.1. The electrical corporation has participated in the WSD Safety Culture Assessment process and committed to implement recommendations for improvement

On November 19, 2020, the Commission approved an annual Safety Culture Assessment (SCA) process to begin in 2021 in Resolution WSD-011. The WSD’s first SCA commenced in March 2021 and is expected to be complete by the end of August 2021. Once the 2021 SCA is complete, the WSD will present its findings to the electrical corporation along with recommendations for improvement. To fulfill this requirement, the electrical corporation must commit to implement any recommendations from the WSD. However, the electrical corporations are not expected to have implemented any of the 2021 recommendations by the time of their Safety Certification requests in September 2021.

2.2.3.2 Other criteria

~~The WSD will take into consideration the findings of any other SCAs and the extent to which an electrical corporation is implementing the associated recommendations.⁶~~

~~Further, the WSD is proposing additional criteria to consider when deciding whether an electrical corporation is in good standing. For example, the WSD might take it into account if an electrical corporation is found by CAL FIRE⁷ to have caused a catastrophic wildfire and the WSD finds that the electrical corporation was not in compliance with all relevant WMP initiatives at the time. This may result in the WSD finding that the electrical corporation is not in good standing even if it has agreed to implement the WSD’s recommendations associated with its most recent SCA.~~

2.2.3.2. The electrical corporation has not agreed to implement the findings of its most recent safety culture assessment, but has satisfied “good standing” in other ways

To the extent findings from a recent safety culture assessment are not available, or an electrical corporation cannot otherwise agree to implement them, then the electrical corporation may be able to satisfy “good standing” as it has in the past, such as by furnishing documentation about its safety training and other policies; its plans for handling safety incidents in light of data on the number of reported ignitions, fatalities, damaged or destroyed structures related to wildfires alleged to be caused by utility infrastructure; worker and contractor fatalities and incidents since issuance of the previous Safety Certification and their connection to wildfires; and Commission investigations and court actions, if any, related to safety violations of the electrical corporation, including ongoing and closed investigations.

2.2.4. Board Structure

An electrical corporation must meet two requirements related to its board of directors under Pub. Util. Codes §8389(e)(3) and §8389(e)(5). The first requirement under Pub. Util. Code §8389(e)(3) states that its board of directors must have a safety committee comprised of

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members with appropriate and relevant experience. For 2021, the WSD will require the electrical corporations to:

⁶ For example, any recent findings from the Commission's 5-year SCA.

⁷ CAL FIRE is the California Department of Forestry and Fire Protection.

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- Submit any updates to the membership of their safety committee, including sharing new members' relevant experience and expertise via a resume or other documents;
- Describe how the safety committee aligns with overall company governance;
- Report on significant topics covered by the safety committee; and
- Describe any actions recommended by the safety committee that were implemented by the electrical corporation.

The second requirement pursuant to Pub. Util. Code §8389(e)(5) states that the electrical corporations have established board-level reporting to the Commission on safety issues. The WSD will work with Commissioners to coordinate at least one public meeting during the third quarter of 2021 in order to ensure this requirement is met in a transparent manner. For each electrical corporation, a board member, along with the chief safety/risk officer (or equivalent), should brief the Commission on safety performance and any other relevant items. Details regarding this public meeting will be noticed in accordance with open meeting laws. Electrical corporations will be required to provide briefing materials to demonstrate that the electrical corporation has met this requirement.

2.2.5. Executive Compensation

Pub. Util. Codes §8389(e)(4) and §8389(e)(6) require the electrical corporation to receive approval of its 2021 Executive Compensation structure from the WSD.

The WSD issued guidance⁸ on December 22, 2020, instructing the electric corporations to submit their 2021 Executive Compensation plans on January 15, 2021. Supplemental submissions were received from Pacific Gas and Electric, Southern California Edison, San Diego Gas & Electric on March 5, 2021, following their respective board meetings. The WSD is currently evaluating these submissions.

The WSD will be proposing a public process to determine how to advance the Executive Compensation structures in the future to prioritize safety and ensure both public safety and electrical corporation financial stability. Future changes to the Executive Compensation guidance will not affect the 2021 Safety Certification process.

3. Comments

Interested stakeholders may submit comments on the proposed 2021 Safety Certification guidance by 5 p.m. on Tuesday, June 1, 2021, to the following email address: wildfiresafetydivision@cpuc.ca.gov. Reply comments may be submitted by 5 p.m. on Tuesday, June 15, 2021, to wildfiresafetydivision@cpuc.ca.gov. Both stakeholder comments and electrical corporation replies must be served on the service list to R.18-10-007. The WSD will

⁸ https://www.cpus.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/WSD/WSD%20Executive%20Compensation%20Guidance%202021222.pdf.

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post all comments and reply comments to the WSD website at the following address:
www.cpuc.ca.gov/wsd. Workshops may be held to discuss this guidance with stakeholders.

4. Review Process

The WSD Director will review each electrical corporation's Safety Certification request for compliance with Pub. Util. Code 8389(e) and the requirements and principles set forth herein and will issue a letter of approval or denial. The WSD may require that electrical corporations provide additional information or request changes in advance of approval.

For questions regarding the guidance provided in this letter, please contact Lucy Morgans, Acting Program Manager in the Wildfire Safety Division, at lucy.morgans@cpuc.ca.gov, with a copy to wildfiresafetydivision@cpuc.ca.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Thomas Jacobs', with a stylized, flowing script.

Caroline Thomas Jacobs
Director, Wildfire Safety Division
California Public Utilities Commission